

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:17-CR-63-FL-1

UNITED STATES OF AMERICA,

v.

LUIS CESAR ROSAS,

Defendant.

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ORDER

This matter is before the court on defendant's motions for reduction of sentence, (DE 35, 39), and to compel the Federal Bureau of Prisons ("FBOP") to transfer defendant to the custody of immigration officials, (DE 40). The government did not respond to the motions.

On August 15, 2017, defendant pleaded guilty to illegal reentry of an aggravated felon, in violation of 8 U.S.C. §§ 1326(a) and 1326(b)(2). On January 10, 2018, the court sentenced defendant to 40 months' imprisonment and one year of supervised release.


Defendant, proceeding pro se, filed the instant motion to reduce sentence on January 28, 2019, and filed renewed motion on May 2, 2019. On June 3, 2019, defendant filed motion to compel the FBOP to transfer defendant to immigration custody.

Defendant argues that he is entitled to a sentence reduction based upon Amendments 706 and 484 to the Sentencing Guidelines, which allegedly have the effect of lowering his Guidelines range. Those amendments, however, were enacted prior to defendant's sentence in this case, and thus they cannot retroactively lower his Guidelines range. See U.S.S.G. App. C, Amends. 484, 706; see also U.S.S.G. § 1B1.10. To the extent defendant is seeking a sentence reduction under section 404 of the First Step Act of 2018, that provision is inapplicable to defendant because his offense of conviction did not involve controlled substances. See United States v. Wirsing, 943

F.3d 175, 185 (4th Cir. 2019), as amended (Nov. 21, 2019). And where defendant is not entitled to a sentence reduction, the court lacks authority to modify defendant's final sentence, or otherwise order the FBOP to transfer him to immigration custody. See 18 U.S.C. § 3582(c).

Based on the foregoing, defendant's motions for reduction of sentence, (DE 35, 39), and to compel FBOP to transfer him to immigration custody, (DE 40), are DENIED.

SO ORDERED, this the 2nd day of July, 2020.



LOUISE W. FLANAGAN
United States District Judge